

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

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PLAINTIFF,

*

CV-05-1086-WKW-DRB

VS.

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**EIGHTY THOUSAND SIX HUNDRED
THIRTY-THREE DOLLARS
(\$80,633.00) IN UNITED STATES CURRENCY;
FOUR THOUSAND EIGHT HUNDRED
SEVENTY-EIGHT DOLLARS (\$4,878.00)
IN UNITED STATES CURRENCY; AND
THIRTY-SIX THOUSAND
FIVE HUNDRED DOLLARS (\$36,500)
IN UNITED STATES CURRENCY**

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DEFENDANTS.

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CLAIMANT'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL

Now come the claimants, by and through the undersigned and hereby respond to this honorable court's show cause order as to why the plaintiff's motion to compel should not be granted. As grounds for such motion, the claimants submit the following:

1. The claimant's do not object to the Government's rendition of the facts as presented in its motion to compel.
2. However, the claimants object to bearing the costs of a deposition which the United States Government knew in advance that the claimants would not appear.
3. The United States Government failed to mitigate its own damages, i.e. the cost of securing a court reporter for the deposition, by willfully convening a reporter knowing that the claimants would not appear, only to get the fact that they were

not going to appear on the record. (See Motion to Compel, page 2, pgh 1, lines 1-3).

4. Such cost incurred is not the fault or responsibility of the claimants. The plaintiff was timely notified that the claimants would not appear and the reasons why via the undersigned's letter to the United States Government prior to incurring the cost of a court reporter (See Plaintiff's Exhibit B). There was no need to convene a court reporter to record a non-appearance when the Government already possessed such a record.
5. Besides asserting their Fifth Amendment rights, the second reason for not appearing at the deposition was that the scheduling of the claimants' depositions was premature.
6. Currently, there are two dispositive motions pending before the Court which would render the taking of the claimants depositions moot if resolved in favor of the claimants. Such motions are a motion to suppress illegally obtained evidence and motion to dismiss for lack of jurisdiction (See Doc.'s 29 and 40).
7. Such motions, if resolved in favor of the claimants, would not only render the taking of the claimants' depositions moot, but also preserve their privacy rights as protected under the Fourth Amendment to the United States Constitution, as well as eliminate the cost of such depositions
8. The claimants have been deprived of their funds made subject of this action for over 16 months by the United States Government's illegal conduct, causing them extreme hardship and inconvenience. Forcing the costs of a deposition on the

claimants and compelling them to testify at this juncture is both unnecessary and unfair.

9. Should the Court decide the dispositive motions in favor of the Government, the Claimants will submit to depositions and invoke their Fifth Amendment rights at that time, or if the court should order the taking of the claimants depositions prior to resolution of the outstanding motions, then the claimants would, of course, attend the depositions.
10. In any event, the cost of the initial setting of the depositions should not be incurred by the claimants, but by the Government.

Respectfully Submitted,

/s/ Joe M. Reed
Joe M. Reed

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CERTIFICATE OF SERVICE

I herby certify that the following was served on

The Honorable John T. Harmon,
United States Attorney for the Middle District of Alabama,
1 Court Square
Montgomery, Alabama 36104

By electronic notification, courtesy of the Clerk of the United States District Court,
Middle District of Alabama.

/s/ Joe M. Reed
Joe M. Reed